UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,973	07/12/2001	Joseph A. Schrader	164052.02	9505

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EXAMINER
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ART UNIT	PAPER NUMBER
2426	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	09/903,973	SCHRADER ET AL.
	Examiner	Art Unit
	PAUL GRAHAM	2426

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-9,11-13,16-18 and 29* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-9, 11-13, 16-18, 29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION
Response to Arguments

1.   Applicant argues:

<u>*Boyer fails* to *disclose the element* of *presenting* a *visual cue* to *the viewer* ...</u>

The Examiner respectfully disagrees. The reference shows that Boyer discloses visual

cues based on IP data (see Boyer, fig. 4 & 6a for personalization with IP data, visable on

display indicating something such as content genre, start time, rating, each cues (visual)

indicating the status in real time (note response to requests, Boyer, col. I I, ll. 15-30)).

Reading the claims in the broadest sense, Boyer does teach presenting a visual cue

where the status indicates in real time a programs active or inactive. Applicant is

reminded that although the claims are interpreted in light of the specification, limitations

from the specification are not read into the claims. See *In re Van Geuns,* 988, F.2d

1181,26 USPQ2d 1057 (Fed. CiT. 1993).

Said visual cues based on IP data comprise an indicator (claim 7) and an event

alert (claim 29) both terms represent the *cue,* both terms represent an indication on the

display of some event, in fact, support for such similarity is given in the instant spec (see

[78]) where it is recited *"alerts* or other real-time *indicators* that inform the viewer of

certain events or the *active status* of. .. " denoting no difference in their use).

Additionally, claim 7 recites an "active status ... , wherein the status indicates in real-

time ... " further noting that said "active" indicator is a "real-time" indicator (as defined

by said claims), therefore the rejection clearly reads on claim 7 and claim 29.

The Applicants arguments have been fully considered and are not persuasive. Claims 7-9, 11-13, 16-18, 29

stand rejected.

Claim Rejections - 35 USC § 112

2. Claims 7, 9, and 29 rejected under 35 U.S.C. 112, first paragraph, as failing to comply

with the written description requirement. The claim(s) contains subject matter which was

not described in the specification in such a way as to reasonably convey to one skilled in

the relevant art that the inventors), at the time the application was filed, had possession

of the claimed invention.

3. Claim 7 recites as amended "wherein the status indicates in real time whether the one or

more currently available broadcast television programs is currently active or inactive". In

the instant specification it is noted that broadcast programming data and IP content are

initially received by the client system and "alerts ... inform the viewer of programs *not*

currently being viewed" (see instant spec [78]). From this information it is unclear that

said program is currently being broadcast or was just initially broadcast, additionally it is

difficult to discern the currency of the active status given that the program is currently not

being viewed, it is not certain that it is being broadcast. The text of the specification

does not support the allegations that are being claimed.

4. Figure 9 supposedly shows a "dimmed or non-highlighted football. .". This is not shown

in the instant figure 9, although alleged in remarks *8118/08* p. 7. The instant specification

recites that status may be provided as a visual cue is lightened or darkened. Fig. 9

certainly does not show this and it is put forth that it cannot show this, in fact, even with

the use of bold text, the *"lightening or darkening"* of the navigation element cannot be

indicated. Hence, there is a gap between what is alleged and claimed and what is

supported in the specification, leading to a violation of 112.

5.   As to claim 29, as amended it recites "cue comprises a real-time event alert informing the

user of an action that is *about* to occur in a currently broadcast television program". If

the event is in real-time, then it must relay the alert information as it is happening, not

before it occurs. Indicating that an event is *about to occur is prediction,* not real-time

reporting. There is no support in the instant specification for *prediction-based* alerts.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -
(e) the invention was described in (J) an application for patent, published under section 122(b), by another
filed in the United States before the invention by the applicant for patent or (2) a patent granted on an
application for patent by another filed in the United States before the invention by the applicant for patent,
except that an international application filed under the treaty defined in section 351 (a) shall have the effects
for purposes of this subsection of an application filed in the United States only if the international
application designated the United States and was published under Article 21 (2) of such treaty in the English
language.

7.   Claims 7-9,11-13, 16, 18, and 29 are rejected under 35 U.S.C. 102(e) as being
anticipated by Boyer et al. (US Patent 7,165,098 BI).

Regarding claims 7 and 29 (corresponding method), Boyer teaches a method for presenting

enhanced broadcast television programming (Fig, 1 & 3 and col. 6/lines 45-63 for an enhanced broadcast

television system with the incorporation of the Internet) comprising the steps of: receiving a schedule for a

plurality of broadcast television listings. each of the plurality of television listings including a unique event

identifier (Figs. 4 & Sa, and col. *4/lines* 25-41 for unique event identifiers); receiving enhanced Internet

protocol (IP) data including an event identifier associating the IP data with one of the plurality of television

listings. wherein the IP data corresponds to broadcast television programming currently available to a

viewer (col. S/line S9 to col. lO/line 42 as TCPIIP protocol is used for representing IP data corresponding to

the broadcast television programming using HTML pages); presenting a visual cue to the viewer based on

the IP data on a video display wherein the visual cue comprises an active status indicator indicating the

status of one or more currently available broadcast television program. wherein the status indicates in real-

time whether the one or more currently available broadcast television programs IS currently active or

inactive Said visual cues based on IP data comprise an indicator (claim 7) and an event

alert (claim 29) both terms represent the *cue,* both terms represent an indication on the

display of some event, in fact, support for such similarity is given in the instant spec (see

[78]) where it is recited *"alerts* or other real-time *indicators* that inform the viewer of

certain events or the *active status* of. .. " denoting no difference in their use).

Additionally, claim 7 recites an "active status ... , wherein the status indicates in real-

time ... " further noting that said "active" indicator is a "real-time" indicator (as defined

by said claims), therefore the rejection clearly reads on claim 7 and claim 29);

receiving a viewer selection of the visual cue; and tuning to the channel associated with the event identifier

in response to viewer selection of the visual cue" {Fig. 4 with visual cues for setting the programs based on

the active status as for tcday's schedule, this week, this month. reminder delivery etc, andlor as in Fig, 6a

for active status of currently available program as title, actor, channel, start time Of rating etc. or the genre

of the programfs). The reference shows that Boyer discloses visual cues based on IP data

(see Boyer, fig. 4 & 6a for personalization with IP data, visable on display indicating

something such as content genre, start time, rating, each cues (visual) indicating the status

in real time (note response to requests, Boyer, col. II, 11.15-30).

For claim 8, Boyer teaches "wherein the video display is a conventional television

receiver" (Fig. 3/item 120 or 112).

For claim 9, Boyer teaches "wherein the Internet protocol data comprises a portion ofthe

available television programming" (Fig. 23 and col. 1911ine 48 to col. 20lline 27).

For claims 11- 13, these claims for the steps of "wherein the Internet protocol data portion

is filtered to correspond to currently available sports television programming"; "wherein

the Internet protocol data portion is filtered to correspond to other sports television

programming currently in progress"; and "wherein the portion corresponding to the

available television programming is the same as the event identifier corresponding to the

IP data" are taught by Boyer as discussed earlier an further in Figs. 6a & 8 for sports and

other categories as well as Fig. 22 and col. l2/lines 22-51 on how the data is being

filtered to sports).

As for claim 16, Boyer teaches "a client system for receiving a broadcast television navigation

service comprising: means for receiving broadcast television programming (Fig. 1 & 3 and col.

6/1ines 45-63 for an enhanced broadcast television system with the incorporation of the Intemet);

means for receiving Intemet protocol (IP) data that is not provided in a program band of the

broadcast television programming (Fig. 3 and col. 9nines 23-30 as the television signals and the

intemet data are received from 2 different inputs 118 for TV and web communication link 104-

which is clearly not in a program band of the TV programming), wherein the IP data corresponds

to broadcast television programming *currently* available to a viewer (col. 8/1ine 59 to col. 10/line

42 as TCPIIP protocol is used for representing IP data corresponding to the broadcast television

programming using HTML pages); and

means for linking the broadcast television programming with the Internet protocol data; means for

receiving enhanced Intemet protocol (IP) data including an event identifier associating the IP data

with one of the plurality of television listings, wherein the IP data corresponds to broadcast

television programming *currently* available to a viewer (col. 8lline 59 to col. 10lline 42 as TCPIIP

protocol is used for representing IP data corresponding to the broadcast television programming

using HTML pages);

means for presenting a visual cue to the viewer based on the IP data on a video display wherein

the visual cue comprises an active status indicator indicating the status of one or more *currently*

available broadcast television program, wherein the status indicates in real-time whether the one

or more *currently* available broadcast television programs is *currently* active or inactive: receiving

a viewer selection of the visual cue; and tuning to the channel associated with the event identifier

in response to viewer selection of the visual cue" (Fig. 4 with visual cues for setting the programs

based on the active status as for today's schedule, this week, this month, reminder delivery etc.

and/or as in Fig. 6a for active status of *currently* available program as title, actor, channel. start

time or rating etc. or the genre of the program(s), display is means).

As for claim 18, Boyer further teaches this recording feature for recording one or more of the

received broadcast television programming (Fig.2 item 68).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
    obviousness rejections set forth in this Office action:

    (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject mailer sought to be patented and the prior art are such that the subject mailer as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject mailer pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer et al (US
    Patent 7,165,098 BI) in view of Dougherty et al (US Patent 7,028,327).

Regarding claim 17, Boyer does not suggest using "digital tuners" or "multiple digital

tuners"; however, this technique of "wherein said means for receiving broadcast

television programming and means for receiving Internet protocol data comprises

multiple digital tuners" is known in the art. In fact, Dougherty teaches the same

technique of using digital tuners in their system in order to synchronize with digital

broadcast program while using electronic program guide to search for program listings

(Fig. *2/item* 202, and col. 13/line 50 to col. 14/1ine 2, wherein tuner can be a digital

tuner). Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Boyer's system with Dougherty's teaching

system in order to equip the system with digital tuners for receiving digital broadcasting

programs. The motivation for doing this is to offer an adaptation in receivers by using

digital tuners for receiving and tuning to appropriate digital streaming programs instead

of an analog tuner for receiving conventional (analog) television broadcast.

Conclusion

Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL J. GRAHAM whose telephone number is (571)270-1705. The examiner can normally be reached on Monday-Friday 8:00a-5:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

pjg
10/20/08

/Vivek Srivastava/

Supervisory Patent Examiner, Art Unit 2426